

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

UNITED STATES OF AMERICA,

v.

[3] JERROD NICHOLS SMITH

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**Criminal No. 3:13-00012
Judge Aleta A. Trauger**

ORDER

The defendant has filed a Second Motion to Dismiss (Docket No. 193), to which the government has responded (Docket No. 194.) The defendant’s motion is **DENIED** in all respects.


The defendant previously filed a motion to dismiss on September 3, 2014. (Docket No. 161.) The motion was premised on four points of argument. The court considered and rejected the defendant’s arguments as without merit. (See Docket No. 163, Oct. 10, 2014 Order.) The pending second motion consists of five points of argument. The first four of these points are essentially copied and pasted from the first motion to dismiss and are duplicative thereof. As to these, the government has appropriately relied upon its prior arguments. The court incorporates the discussion set forth in its October 10, 2014 Order and reaches the same conclusions. *Id.*

The defendant has also added one additional argument – specifically, that “a thorough search of the materials supplied the defense by the government fails to disclose any admissible evidence of any nature, circumstantial or direct, which would tend to establish” any elements of the charges against the defendant. Phrased more colloquially, the defendant claims that the government has little or no evidence against him. As the government correctly indicates,

however, the defendant's own assessment of the government's evidence is not a basis to request pretrial dismissal of the indictment. In short, the grand jury returned an indictment against the defendant after finding that the government had met its burden of proof that there was probable cause to establish each of the elements of the offenses charged. At trial, Federal Rule of Criminal Procedure 29 provides the defendant with the opportunity to move for a judgment of acquittal based on insufficiency of the evidence in the appropriate circumstances.

It is so **ORDERED**.

Enter this 6th day of May 2015.



Aleta A. Trauger
Aleta A. TRAUGER
United States District Judge